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Philip Anderson, Chair | Charles A. Tracy, Executive Director

DRAFT: September XX, 2018

Mr. Alan Risenhoover, Director
Office of Sustainable Fisheries
NOAA Fisheries
1315 East-West Highway
Silver Spring, MD 20910

Dear Mr. Risenhoover:

The Pacific Fishery Management Council (Council) appreciates the opportunity to review the draft “National Marine Fisheries Service (NMFS) Procedural Directive on Coast Allocation in Electronic Monitoring Programs for Federally Managed U.S. Fisheries” (directive) and included this issue on its June and September 2018 meeting agendas. The legislative and policy mandates on which the directive is based are somewhat complex, and the Council appreciates the extension of the comment deadline to accommodate additional time for review.

The proposed criteria for the program is overly prescriptive. It should be designed with sufficient flexibility to distinguish between similar activities which have different design functions and intents. For example, the draft directive identifies reviewing video and summarizing the video data as analogous to at-sea monitoring and data summary by observers. It therefore categorizes the activity as a sampling cost; however, some programs such as the Pacific Council’s trawl catch share electronic monitoring (EM) program, are designed and intended to function differently. For this EM program, the collection and summary of data that is analogous to at-sea observer activities occurs when fishers enter discard information into a logbook. Service providers then review the video to spot check fishers logbook records, in effect auditing the data summarized by fishers. This video review to audit fisherman data summaries might be considered analogous to NMFS audits of service provider summaries of data from video. The draft directive categorizes “auditing of service provider(s)” as an administrative function. Thus, within the trawl catch share EM program, video review would be an auditing function (an administrative costs) rather than data summary function (a sampling cost). Such differences point to a need to specify the criteria in a more generic fashion.

The Council recommends that the directive specifically describe a greater Council role in the directive’s application and provide more flexibility for Council determinations. The example in the previous paragraph indicates that application of procedural criteria may imply the need for policy evaluations that are more within the purview and responsibility of the Council’s advisory role under the Magnuson-Stevens Act. If more flexible criteria are developed, as recommended,

interpreting the function and intent of specific program elements would become a more important Council function. Additionally, there are a number of places where the draft directive requires the determination of appropriateness of a particular activity, implying a NMFS policy evaluation which may benefit from Council advice.

Another area where the Council found need for discretion in applying the directive is in the use of EM to augment or replace NMFS scientific observers. For example, in the groundfish open access or state managed pink shrimp fisheries. The draft directive guidance states that where EM programs “are initiated by a Council, for example, to provide greater operational flexibility to industry participants or an exemption from otherwise applicable requirements, industry will be responsible for the sampling costs.” However, application of this criteria may not be that straight forward. Development of EM for a specific fishery may be supported by NMFS within the Council process because EM may be more cost effective or more appropriate on small vessels where space constraints raise safety and operational issues. This could allow an increase in at-sea coverage. Where there is a combination of benefits to management and the fishery, what proportion of the costs would be borne by industry?

In relation to these policy choices, the Council also notes that the draft directive appears inconsistent in its specification of situations where industry payment of costs is required and where NMFS has discretionary authority. It states industry payment of EM costs is required for cost recovery under limited access privilege programs (LAPPs) but also that “In such fisheries [LAPPs], NOAA Fisheries *may* collect fees from industry to pay for administrative costs, sampling costs, or both, as consistent with statutory and regulatory requirements” (emphasis added). This uncertainty is amplified by the page five table of “Cost Responsibility Options,” which does not include indications of the criteria for applying the options or the circumstances in which an option is available.

The Council also believes the context for the draft directive is not sufficiently broad in scope. The adopted policy directive and this draft procedural directive acknowledge that “fishery-dependent data collection programs often include a combination of data collection methods in addition to EM.” However, the draft directive defers the development of cost allocation frameworks for these other methods until a later time. At the same time, the draft directive acknowledges the close linkage between policy development across these methodologies when it uses one methodology to justify cost classifications for another methodology (e.g., identification of elements that are analogous between electronic monitoring and observers, as described above). The Council recommends that a more holistic look at vessel monitoring would be appropriate for the procedural directive (look at EM within the context of the entire network of fishery dependent data collection systems). This would help facilitate the equitable application of policies across regions and across monitoring methodologies (e.g. EM and human observers).

Again, the Council appreciates NMFS delay of the comment deadline until October 1 to allow the development of additional comments on the current draft. Generally, the Council requests comment time frames on documents such as this be of sufficient length to include two Council meetings, including the lead time necessary to put matters on the Council agenda. This will be particularly important for the upcoming procedural directive on EM data storage.

Thank you again for the opportunity to provide these comments.

Sincerely,

Phillip Anderson
Council Chair

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Cc: Mr. Brett Alger
Ms. Rachel Baker
Pacific Council Members
Regional Council Executive Directors

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